

EXHIBIT 3



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EARTHJUSTICE
LEGAL DEFENSE FUND

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PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Patti Goldman, Esq.
Earthjustice
705 Second Avenue
Suite 203
Seattle, WA 98104

SEP 24 2004

Dear Ms. Goldman:

I am writing in response to your letter to EPA Administrator Leavitt dated July 26, 2004. You state that your letter constitutes a notice of intent to sue EPA under the Endangered Species Act unless EPA redoes certain "no effect" and "not likely to adversely affect" determinations for 41 pesticides to incorporate the "best science" and the "pesticides' full effects." This letter outlines EPA's plan for updating certain of these effects determinations in light of, and consistent with, the recent interagency review between EPA, the National Marine Fisheries Service (NOAA Fisheries), and the Fish & Wildlife Service (FWS) to ensure that EPA's approach to conducting effects determinations appropriately identifies actions that are not likely to adversely affect listed species and that are consistent with determinations that otherwise would be made by the Services.

Specifically, it is EPA's intention to review our determinations and, where appropriate, prepare an updated ecological risk assessment for those pesticides for which EPA has made "may affect" determinations for one or more evolutionarily significant units (ESUs) and for which EPA and NOAA Fisheries are currently in consultation under the Washington Toxic Coalition order. EPA intends to follow the approach outlined in the "Overview of the Ecological Risk Assessment Process in the Office of Pesticide Programs, U. S. Environmental Protection Agency - Endangered and Threatened Species Effects Determinations" January 23, 2004. NOAA Fisheries, as well as the Fish & Wildlife Service, have concluded that "the approach used by OPP [outlined in the Overview document] should produce effects determinations that appropriately identify actions that are not likely to adversely effect [sic] listed species or critical habitat, and that are consistent with those that otherwise would be made by the Services."

EPA is not aware of information that suggests the need to conduct this review for those pesticides for which EPA has determined that the pesticide will have "no effect" for all of the 26 listed salmonid ESUs. If, however, you are aware of specific, relevant studies or other information that you believe contradict EPA's findings and that were not previously considered by EPA, the Agency encourages you to submit such information for our consideration.

Finally, as your letter correctly notes, EPA and NOAA Fisheries have not completed and are still engaged in consultation on the pesticides at issue for which EPA made "may affect" determinations for one or more of the 26 listed ESUs of Pacific salmonids. Your letter makes reference to a draft document from NOAA Fisheries regarding these consultations and cites several passages from that document in support of your conclusion that EPA's effects determinations are flawed in certain respects and must be redone. EPA has not received from NOAA Fisheries in either final or draft form the document you forwarded to us. Further, NOAA Fisheries staff have assured us that they continue to be engaged in consultation with EPA regarding these pesticides and that they expect to work with EPA as we review these determinations consistent with the approach developed in the recent interagency review discussed above. Accordingly, EPA does not intend to address the substance of the draft document you attached to your letter, but, rather, will work with NOAA Fisheries through official channels in the manner discussed above to help ensure that EPA satisfies its ESA obligations.

Yours truly,

A handwritten signature in black ink, appearing to read 'James J. Jones', with a long horizontal stroke extending to the right.

James J. Jones, Director
Office of Pesticide Programs